

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

**INNOGENETICS N.V.,
a Belgian Corporation,**

Plaintiff,

v.

Case No. 05-C-0575-C

**ABBOTT LABORATORIES,
an Illinois Corporation,**

Defendant.

JOINT PRELIMINARY PRE-TRIAL CONFERENCE STATEMENT

After meeting and conferring under Rule 26(f) on November 8, 2005, Plaintiff, Innogenetics N.V. ("Innogenetics") and Defendant, Abbott Laboratories ("Abbott") submit the following Joint Preliminary Pre-trial Conference Statement in anticipation of the Telephone Preliminary Pretrial Conference set for November 22, 2005 at 9:15 a.m.

Parties' Proposed Scheduling and Discovery Plan

Except where alternate dates are proposed, the parties agree to the following discovery plan under Fed. R. Civ. P. 26(f):

A. **Last day to amend pleadings:** January 15, 2006.

B. **Rule 26 Disclosures:** Plaintiff proposes that the parties exchange Rule 26(a)(1) disclosures on or before November 22, 2005; Defendant proposes November 29, 2005 for such disclosures.

C. **Trial:** Plaintiff proposes August 21, 2006 as the trial date; Defendant proposes September 18, 2006.

D. **Dispositive Motion Deadline:** May 8, 2006. Responses and replies shall be filed in accordance with the Court's standard summary judgment briefing schedule.

E. **Disclosure of Expert Reports:** Exchange of expert reports on issues for which each respective party bears the burden of proof (including damages disclosures under Rule 26(a)(1)(c)) shall be made in accordance with Rule 26(a)(2) as follows:

- **Initial Reports:** March 7, 2006
- **Rebuttal Reports:** April 7, 2006

F. **Discovery Cutoff (expert and fact):** Plaintiff proposes June 30, 2006; Defendant proposes July 28, 2006.

G. **Settlement Letters:** Plaintiff proposes July 11, 2006; Defendant proposes August 8, 2006.

H. **Final Pre-trial Conference:** Plaintiff proposes July 28, 2006; Defendant proposes August 25, 2006.

The parties stipulate to opt out of the disclosures required by Fed. R. Civ. P. 26(a)(1)(B) through (D), and further stipulate that any document that a party would otherwise be required to

disclose under Rule 26(a)(1)(B) through (D) will be produced as part of the party's response to the opposing party's requests for the production of documents.

Except as stated below, the parties further stipulate that the limitations of the Federal Rules of Civil Procedure should govern discovery in this matter, including the limitations on the number of depositions. The parties agree that the 10 depositions permitted by Rule 30(a)(2)(A) shall not include depositions of expert witnesses, and that the parties be allowed to serve up to 40 interrogatories. If it is later determined that additional discovery is needed, the parties will work together to facilitate reasonable additional discovery before seeking relief from the Court.

OTHER INFORMATION REQUESTED IN STANDING ORDER

In addition to the above discovery plan, the parties submit the following as a joint preliminary pretrial statement to the Court:

1. Nature of the Case

This is an action for patent infringement. Plaintiff Innogenetics seeks an injunction and damages due to the alleged infringement of U.S. Patent No. 5,846,704 ("the '704 patent") entitled "Process for Typing of HCV Isolates." Defendant Abbott has denied the infringement allegations and has filed a counterclaim for a declaration of non-infringement, invalidity and / or unenforceability.

2. Related Cases

There are no related cases between the parties. However, on the same day this suit was filed, Innogenetics also sued Third Wave Technologies, Inc. in this Court for infringement of the '704 patent. That case, *Innogenetics N.V. v. Third Wave Technologies, Inc.*, No. 05-C-0574-C, has also been assigned to Chief Judge Crabb.

3. Specific Statement of Material Factual and Legal Issues

- a. The issue of infringement of the patent-in-suit, and whether any such infringement was willful;
- b. The validity and enforceability of the patent-in-suit, and the issue whether plaintiff engaged in inequitable conduct;
- c. Whether an injunction should issue; and
- d. Damages, if the patent-in-suit is determined to be valid and infringed.

4. The Possibility of Simplifying the Issues

The parties will work together to determine if there are possible stipulations regarding factual issues in this litigation.

5. The Possibility of Obtaining Admissions of Fact and of Documents and Stipulations Regarding the Authenticity of Documents

The parties will work together to stipulate to facts and documents, including the authenticity of documents.

6. The Necessity or Desirability of Obtaining Advance Evidentiary Rulings

The parties will attempt to bring to the Court's attention at the earliest possible time any issues relating to the admissibility of evidence on which an advance ruling would be helpful.

7. The Need to Limit the Use of Expert Testimony under Rule 702, Fed. R. Evid.

Not known at this time.

8. The Identity of any New Parties

Counsel are not presently aware of the need to add any new parties.

9. A Description of Any Amendments to the Pleadings

Counsel are not presently aware of the need to amend any pleadings.

10. The Estimated Length of Time Required for Trial

Innogenetics estimates it will take 5 trial days to present its case, including its damages and willfulness case.

Abbott estimates it will take 5 trial days to present its case.

11. Settlement Discussions/Alternative Dispute Resolution

At this time, the parties would like to defer the use of alternative dispute resolution to determine if this matter can be resolved without it.

12. Other Items

A. ***Electronic Service:*** The parties hereby consent in writing that service by electronic means shall be allowed as set forth in Fed. R. Civ. P. 5(b)(2)(D) and that such service shall be complete upon transmission, provided there is proof that such electronic transmission was successful. Proof shall consist of either a return e-mail confirming receipt of said transmission or a confirmation from the recipient's server of receipt of the e-mail.

B. ***Electronic Copies:*** The parties agree that copies of all written discovery requests shall be provided and/or served electronically and that copies of all proposed findings of fact as required by the Court's standing order shall be provided and/or served electronically.

C. ***Protective Order:*** Prior to the production of documents in this case, the parties will seek from the Court the entry of a Protective Order governing confidential information, in a form to be agreed upon by the parties.

Dated this 15th day of November, 2005.

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ATTORNEYS FOR DEFENDANT
ABBOTT LABORATORIES

CERTIFICATE OF SERVICE

I CERTIFY that on the 9th day of November, 2005, a copy of the Joint Preliminary Pre-Trial Conference Statement was served upon the following individuals:

via Hand-Delivery to:

John S. Skilton
Michelle M. Umberger
David L. Anstaett
Melody K. Glazer
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